

CITY OF FREDERICK
ZONING BOARD OF APPEALS
MEETING MINUTES
June 22, 2010

MEMBERS PRESENT:	STAFF PRESENT:
Mr. Racheff Ms. Colby Mr. Hazlett Mr. Marvin Kennedy Mr. Dario Cavazos Mr. Philip Dacey	Gabrielle Dunn, Division Manager of Current Planning Lea Ortiz, Office Manager Brandon Mark, City Planner

ANNOUNCEMENTS

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For the benefit of the audience and especially the applicants, Mr. Racheff, Chairman, introduced everyone by name and department and explained the Zoning Board of Appeals process.

APPROVAL OF MINUTES:

May 25, 2010 ZBA Minutes

MOTION: Mr. Hazlett moved to approve the May 25, 2010 hearing minutes as published.

SECOND: Mr. Cavazos

VOTE: 4-0

GENERAL PUBLIC COMMENT:

There was no general public comment.

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CASES TO BE HEARD

CASE NO.: ZBA10-163V

LOCATION: 406 West 2nd Street

APPLICANT: Thomas Keller

DESCRIPTION:

The Applicant is requesting approval of a variance to allow for the construction of an addition that does not meet the 8 foot interior yard setback requirement for the R6 zoning district as established in Section 405, Table 405-1 of the Land Management Code. **(Mark)**

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BACKGROUND INFORMATION:

The subject property, 406 West 2nd Street, is located between College Avenue and Upper College Terrace, opposite 2nd Street from Zimmerman's Florist. According to the Maryland State Department of Assessment and Taxation (SDAT), the 2,400sf structure was built in 1940 on a lot approximately 7,050sf (0.16ac) in size.

The proposal is to construct a 15' x 36.5' (547sf) addition on to the rear of the existing single family residence. The existing home is setback approximately 10' from the western interior property line and the proposed addition will be approximately 7' wider than the existing home. As noted above, the request is for a variance to Section 405, Table 405-1 of the LMC which requires an interior setback of 8' for principal structures within the R6 zoning district. The Applicant is requesting approval for a variance of 5' to reduce the interior setback from the 8' required to 3' for the addition.

The existing site conditions are as follows:

Primary Structure:	1050sf (30' x35')
Garage:	864sf (27' x 32')
Covered Porch	480sf (30'x 7' front yard) (40' x 7' side yard)
Sidewalk:	221sf (as provided by Applicant)
Apron:	192sf (as provided by Applicant)
Proposed addition:	547.5 (15' x 36.5')

Total Square Footage: 3,354sf

Total Lot Area: 7,050sf

Total Impervious Area: 47.5%

Prior to applying for a variance, the Applicant requested a staff-level yard modification for the proposal (attached as Exhibit B). Per Section 606(j)(1) of the Land Management Code (LMC), side yard adjustments may be granted by staff in primarily developed areas where the actual yards of abutting properties generally differ from those required by Section 405. In this case, the required side/interior yards may be modified to more closely correspond with the actual yards of *adjacent* properties, however, no modification shall totally cut off access, light or air to an adjacent property (emphasis added). Staff did not approve the request based on the finding that none of the setback information provided for comparison were that of properties that are actually adjacent to the subject property, and that the principal structure on all of the properties that are adjacent to the subject property are in conformance with the current setback requirements of Section 405.

It should be noted that the Applicant received a modification from the interior setback along the western property line in August 2009 for the construction of a covered porch located 3' feet from the property line (attached as Exhibit A). Staff concluded that the construction of a porch within 3' of the property line was consistent with the adjacent property to the west- 408 W 2nd Street- which also has an open porch with a 3' interior setback. However, when examining the room addition, Staff concluded that it was not consistent with the adjacent principal structures and that a fully enclosed structure may prevent access, light and air to adjacent properties, whereas the approved covered porch did not.

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STAFF RECOMMENDATION:

Staff does not support the Board's approval of the variance request for the construction of a room addition that fails to meet the 8' interior-yard setback requirements located at 406 W. 2nd Street, , finding that:

1. That the size, shape and topography of the property are consistent with the surrounding properties in the same district and block and therefore, there are no extraordinary conditions unique to this property such as exceptional narrowness, shallowness, shape, topographical conditions, or the use of the property or property immediately adjacent, that renders the strict application of these regulations an undue hardship upon the applicant.
- 2. That granting the variance as requested would be contrary to the purpose and intent of establishing minimum setbacks which is to ensure access, light, and air to adjoining properties.
- 3. That the literal interpretation of the LMC does not deprives the Applicant the right to build a reasonably sized room addition.
- 4. That the granting of a variance from Section 405, Table 405-1 will confer on the Applicant special privileges that are denied by the LMC to other lands or structures in the same district and similarly situated.

APPLICANT PRESENTATION:

Mr. Thomas Keller resides at 404 West 2nd Street and he felt that the neighbors were excited about the addition and that it would enhance the neighborhood. Ms. Lee Allen architect for the applicant, 152 West Patrick Street, added that their intention was not to impede access, light and air as Mr. Mark mentioned in the Staff Report. She noted that there was always a 7-foot porch on the side of the house and that their intention was to enlarge the kitchen space and attach a family room to it.

DISCUSSION:

Mr. Hazlett questioned if this addition would be all a family room. Ms. Allen explained that the owners wanted a bigger kitchen with an elevator and that is one of reasons for the variance request.

Mr. Racheff asked if there were any alternatives designs for this property. Mr. Keller indicated that they could not go in the back yard because it would more than 50% of the coverage. Ms. Allen expressed that the configuration is as such that it would not give usable room taking that same square footage. She also felt that if they did this

configuration it would be too close to the garage in her opinion in terms of light and air.

Mr. Dacey asked the applicant how much distance there would be after adding the addition. Mr. Keller mentioned that it would be approximately 23 feet. Ms. Allen said from a design point of view it is nice to have the porch continuing to the back of the addition.

Mr. Dacey mentioned that the code is pretty strict on conditions that are peculiar to a specific parcel or property.

Mr. Hazlett said his concern is with conditions 1 and 2 of the staff report in regards to air and space for emergency vehicles to access this site. He also felt that the addition coming that close to the property line is a concern because if the neighbor on the other side would do the same, it could impact the neighborhood.

PUBLIC COMMENTS:

There were no public comments.

MOTION: Ms. Colby moved to deny ZBA10-163V for a 5 foot variance for the construction of an addition to 406 W. 2nd Street under Section 405 Table 405-1 of the Land Management Code for a R6 zone finding that:

•1. The size, shape and topography of the property are consistent with the surrounding properties in the same district and block and therefore, there are no extraordinary conditions unique to this property such as exceptional narrowness, shallowness, shape, topographical conditions, or the use of the property or property immediately adjacent, that renders the strict application of these regulations an undue hardship upon the applicant.

- 2. Granting the variance as requested would be contrary to the purpose and intent of establishing minimum setbacks which is to ensure access, light, and air to adjoining properties.
- 3. The literal interpretation of the LMC does not deprive the Applicant the right to build a reasonably sized room addition.
- 4. The granting of a variance from Section 405, Table 405-1 will confer on the Applicant special privileges that are denied by the LMC to other lands or structures in the same district and similarly situated.

SECONDED: Mr. Cavazos

VOTE: 4-0

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The meeting adjourned at 7:45 p.m.

Respectfully submitted,

Lea M. Ortiz